

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #3	CCRB Case #: 201807265	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday 08/26/2018 2:30 AM Sunday 09/02/2018	18 Mo. SOL 02-26-2020 03-02-2020	EO SOL 02-26-2020 03-02-2020	Location of Incident: Nostrand Avenue and Foster Avenue; East 52nd Street and Clarkson Avenue		Precinct: 67
Date/Time CV Reported Sun, 09/02/2018 4:20 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 09/02/2018 4:20 AM		

Complainant/Victim	Type	Home Address
1. S [REDACTED] C [REDACTED]	Comp/Victim	[REDACTED] East 18th Street Apt. [REDACTED] Brooklyn NY 11226

Subject Officer(s)	Shield	TaxID	Command
1. POM B [REDACTED] B [REDACTED]	[REDACTED]	[REDACTED]	067 PCT
2. SGT M [REDACTED] S [REDACTED]	[REDACTED]	[REDACTED]	067 PCT
3. POM Joseph Bautista	113	954534	067 PCT
4. POM J [REDACTED] V [REDACTED]	[REDACTED]	[REDACTED]	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF J [REDACTED] V [REDACTED]	[REDACTED]	[REDACTED]	067 PCT
2. POM R [REDACTED] R [REDACTED]	[REDACTED]	[REDACTED]	067 PCT
3. POM S [REDACTED] R [REDACTED]	[REDACTED]	[REDACTED]	067 PCT
4. POM G [REDACTED] G [REDACTED]	[REDACTED]	[REDACTED]	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM B [REDACTED] B [REDACTED]	Abuse of Authority: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer B [REDACTED] B [REDACTED] searched the vehicle in which S [REDACTED] C [REDACTED] was an occupant.	A . Unsubstantiated
B . SGT M [REDACTED] S [REDACTED]	Abuse of Authority: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Sergeant M [REDACTED] S [REDACTED] searched the vehicle in which S [REDACTED] C [REDACTED] was an occupant.	B . Unsubstantiated
C . POM J [REDACTED] V [REDACTED]	Discourtesy: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer J [REDACTED] V [REDACTED] spoke discourteously to S [REDACTED] C [REDACTED]	C . Unsubstantiated
D . POM Joseph Bautista	Discourtesy: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Joseph Bautista spoke discourteously to S [REDACTED] C [REDACTED]	D . Unfounded
E . POM Joseph Bautista	Offensive Language: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Joseph Bautista made remarks to S [REDACTED] C [REDACTED] based upon the mental disability of S [REDACTED] C [REDACTED]	E . Unfounded
F . POM J [REDACTED] V [REDACTED]	Other Misconduct Noted: On August 26, 2018, Police Officer J [REDACTED] V [REDACTED] failed to prepare a memo book entry as required.	F . Other Misconduct

Officer(s)	Allegation	Investigator Recommendation
G . POM Joseph Bautista	Discourtesy: On September 2, 2018, on East 52nd Street and Clarkson Avenue, in Brooklyn, Police Officer Joseph Bautista spoke discourteously to S [REDACTED] C [REDACTED]	G . Unsubstantiated

Case Summary

On September 2, 2018, S [REDACTED] C [REDACTED] filed this complaint with the CCRB via the Call Processing system.

On August 26, 2018, at approximately 2:30 a.m., officers stopped Mr. C [REDACTED] vehicle on Nostrand Avenue and Foster Avenue, in Brooklyn. Sgt. M [REDACTED] S [REDACTED] PO Joseph Bautista, PO B [REDACTED] B [REDACTED] PO R [REDACTED] R [REDACTED] and PO J [REDACTED] V [REDACTED] of the 67th Precinct approached Mr. C [REDACTED] vehicle. Officers instructed Mr. C [REDACTED] to exit the vehicle and he complied. As Mr. C [REDACTED] was standing outside his vehicle, PO B [REDACTED] and Sgt. S [REDACTED] searched Mr. C [REDACTED] vehicle (**Allegation A: Abuse of Authority, Unsubstantiated; Allegation B: Abuse of Authority, Unsubstantiated**). PO V [REDACTED] and PO Bautista allegedly used profanities while speaking to Mr. C [REDACTED] (**Allegation C: Discourtesy, Unsubstantiated; Allegation D: Discourtesy, Unfounded**). PO Bautista allegedly asked Mr. C [REDACTED] “What are you fucking retarded” (**Allegation E: Offensive Language, Unfounded**). At some point, PO J [REDACTED] V [REDACTED] and PO G [REDACTED] G [REDACTED] of the 67th Precinct arrived on the scene and arrested Mr. C [REDACTED] after he refused to take the breathalyzer test.

PO V [REDACTED] failed to prepare a memo book entry regarding this incident (**Allegation F: Other Misconduct**).

On September 2, 2018, at approximately 3:49 a.m., Mr. C [REDACTED] saw the same officers from his arrest on August 26, 2018 at East 52nd Street and Clarkson Avenue in Brooklyn. The officers recognized Mr. C [REDACTED] and PO Bautista used profanities while speaking to Mr. C [REDACTED] (**Allegation G: Discourtesy, Unsubstantiated**). Mr. C [REDACTED] was not issued a summons or arrested during this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer B [REDACTED] B [REDACTED] searched the vehicle in which S [REDACTED] C [REDACTED] was an occupant.

Allegation (B) Abuse of Authority: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Sergeant M [REDACTED] S [REDACTED] searched the vehicle in which S [REDACTED] C [REDACTED] was an occupant.

It is undisputed that Mr. C [REDACTED] was asked to exit the vehicle and then told to return inside his vehicle as they waited for PO V [REDACTED] and PO G [REDACTED] to arrive on the scene to administer the breathalyzer test. Mr. C [REDACTED] refused to take the breathalyzer test and was placed under arrest. Mr. C [REDACTED] was charged with driving while intoxicated, reckless driving, and nine Vehicle Traffic Law infractions (Board Review 18).

In his CCRB statement, Mr. C [REDACTED] denied consuming alcohol and denied committing traffic infractions prior to being pulled over (Board Review 01). Mr. C [REDACTED] was asked to step out of the vehicle and Sgt. S [REDACTED] and PO B [REDACTED] searched the front and rear seats of his vehicle for approximately five minutes. Mr. C [REDACTED] did not know where the officers searched inside his vehicle.

Sgt. S [REDACTED] PO Bautista, PO B [REDACTED] PO R [REDACTED] and PO V [REDACTED] pulled over Mr. C [REDACTED] vehicle after they observed Mr. C [REDACTED] drive at a high rate of speed, run red lights, and fail to use turn signals (Board Review 11-14). Upon speaking to Mr. C [REDACTED] the officers believed that Mr. C [REDACTED] was under the influence of alcohol due to his blood shot eyes, slurred speech, unsteady feet, and smelling the odor of alcohol on Mr. C [REDACTED]

In his CCRB testimony, PO B [REDACTED] stated that the driver door was left opened when Mr. C [REDACTED] stepped out of the vehicle (Board Review 12). PO B [REDACTED] entered the driver side and removed the vehicle's key-fob from the center console to prevent Mr. C [REDACTED] from driving away. PO B [REDACTED] did not recall if he searched anywhere else and denied searching the trunk.

In his CCRB statement, Sgt. S [REDACTED] did not recall if officers searched Mr. C [REDACTED] vehicle, but he denied searching the vehicle (Board Review 13). PO V [REDACTED] and PO Bautista did not recall if officers searched Mr. C [REDACTED] vehicle and PO R [REDACTED] denied seeing officers do so.

The arrest report noted that a bottle of Hennessey was found in Mr. C [REDACTED] vehicle (Board Review 18). After PO B [REDACTED] reviewed Mr. C [REDACTED] arrest report during his CCRB statement, PO B [REDACTED] recalled seeing a bottle of Hennessey inside Mr. C [REDACTED] vehicle when they initially approached the vehicle, but the other officers did not recall this.

The Highway District Intoxicated Driver Examination and the Intoxicated Driver arrest report concluded that Mr. C [REDACTED] was under the influence of intoxicating beverages/drugs (Board Review 17).

The officers' BWC only captured the events after Mr. C [REDACTED] was instructed to return inside his vehicle and does not show officers searching Mr. C [REDACTED] vehicle (Board Review 03-07).

Given the officers' statements and police documentation, it is undisputed that Mr. C [REDACTED] was intoxicated at the time of the incident.

Without corroborating civilian and officer testimony or video evidence depicting the vehicle search, the investigation was unable to determine whether Sgt. S [REDACTED] searched the vehicle or the scope of PO B [REDACTED] search. Therefore, it is recommended that **Allegations A and B** be closed as **Unsubstantiated**.

Allegation (C) Abuse of Authority: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer J [REDACTED] V [REDACTED] spoke discourteously to S [REDACTED] C [REDACTED]

In his CCRB testimony, Mr. C [REDACTED] stated that on the scene, an officer, identified via the investigation as PO V [REDACTED] told him, "Payback is a bitch," and, "I got you motherfucker" (Board Review 01). Mr. C [REDACTED] recognized PO V [REDACTED] from a prior interaction.

In his CCRB statement, PO V [REDACTED] stated that he did not recognize Mr. C [REDACTED] during the incident (Board Review 14). PO V [REDACTED] denied saying, "Payback is a bitch," "I got you motherfucker," and denied using profanities while speaking to Mr. C [REDACTED]

PO Bautista, PO B [REDACTED] Sgt. S [REDACTED] and PO R [REDACTED] denied having any prior interactions with Mr. C [REDACTED] and denied hearing an officer use profanity toward Mr. C [REDACTED] (Board Review 11-13).

As noted above, the officers' BWC did not capture the incident when Mr. C [REDACTED] initially stepped out of the vehicle. Additionally, the officers' BWC did not capture PO V [REDACTED] using profanities.

Without corroborating civilian and officer testimony or video evidence, the investigation was unable to determine whether PO V [REDACTED] spoke discourtesy to Mr. C [REDACTED]. Therefore, it is recommended that **Allegation C** be closed as **Unsubstantiated**.

Allegation (D) Abuse of Authority: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Joseph Bautista spoke discourteously to S [REDACTED]

Allegation (E) Offensive Language: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Joseph Bautista made remarks to S [REDACTED] C [REDACTED] based upon the mental disability of S [REDACTED] C [REDACTED]

In his CCRB testimony, Mr. C [REDACTED] stated that during the incident he asked PO Bautista if he could call his lawyer and PO Bautista told him no and PO Bautista said, "What the fuck. Are you drunk? Are you stupid or something? You are being detained. You cannot touch your phone" (Board Review 01). PO Bautista also said, "What are you fucking stupid? Are you drunk or something," or, "What are you fucking retarded?"

In his CCRB statement, PO Bautista stated that he repeatedly told Mr. C [REDACTED] that he could not use his phone, but he did not recall if he used profanities (Board Review 11).

Three clips from PO Bautista's BWC footage captures the conversation between PO Bautista and Mr. C [REDACTED] regarding Mr. C [REDACTED] asking if he could call his attorney and PO Bautista telling Mr. C [REDACTED] that he could not use his phone (Board Review 22-24). PO Bautista's BWC footage does not capture PO Bautista using profanities.

Although PO Bautista did not recall if he used profanities, BWC footage captures the entire exchange between PO Bautista and Mr. C [REDACTED] and it disputes Mr. C [REDACTED] account of PO Bautista using profanities or offensive language. As such, it is recommended that **Allegations D** and **E** be closed as **Unfounded**.

Allegation (F) Other Misconduct: On August 26, 2018, Police Officer J [REDACTED] V [REDACTED] failed to prepare a memo book entry as required.

It is undisputed that PO V [REDACTED] was present when officers stopped Mr. C [REDACTED] vehicle on August 26, 2018 and in his testimony, PO V [REDACTED] stated that he stopped Mr. C [REDACTED] vehicle. However, PO V [REDACTED] memo book did not contain pertinent information regarding this incident (Board Review 16).

Officers are required to chronologically record information pertinent to an assignment and all tasks performed during the tour, Patrol Guide Procedure 212-08 (Board Review 26).

Because PO V [REDACTED] did not comply with the above-referenced procedure, it is recommended that he be cited for **other misconduct** in connection with **Allegation F**.

Allegation (G) Abuse of Authority: On September 2, 2018, on East 52nd Street and Clarkson Avenue, in Brooklyn, Police Officer Joseph Bautista spoke discourteously to S [REDACTED] C [REDACTED]

In his initial CCRB statement, Mr. C [REDACTED] stated that on September 2, 2018, while he was walking to his UBER, he saw PO Bautista and other officers conducting an unrelated vehicle stop in the vicinity of the direction he was walking. As Mr. C [REDACTED] was walking, PO Bautista saw Mr. C [REDACTED] and said something to the effect of, “What’s up you fucking dickhead,” to Mr. C [REDACTED] (Board Review 27). During his CCRB interview, Mr. C [REDACTED] did not recall what profanities PO Bautista used (Board Review 01). PO Bautista and Mr. C [REDACTED] argued with each other for approximately before Mr. C [REDACTED] walked away from the officers.

PO Bautista did not have an independent recollection of interacting with Mr. C [REDACTED] but PO Bautista recalled conducting a vehicle stop at approximately 5:14 a.m., in the vicinity of East 51st Street and Clarkson Avenue, in Brooklyn with PO R [REDACTED] PO R [REDACTED] PO B [REDACTED] and Sgt. S [REDACTED] the vehicle stop was documented in PO Bautista’s memo book (Board Review 11 and 25).

All of the officers interviewed stated that they did not have an independent recollection of this incident (Board Review 12-15).

PO R [REDACTED] recalled an individual yelling towards his police vehicle and PO R [REDACTED] informed PO R [REDACTED] that he had arrested that individual for DWI a week prior (Board Review 15). PO R [REDACTED] did not hear an officer speak discourteously towards that individual.

Given PO R [REDACTED] account of the incident and documentation indicating that PO Bautista was in the vicinity of the incident location, the investigation determined by a preponderance of the evidence that on September 2, 2018, Mr. C [REDACTED] interacted with PO Bautista and the officers who were present during his arrest on August 26, 2018. However, without corroborating civilian and officer testimony or additional evidence, the investigation was unable to determine whether PO Bautista spoke discourteously to Mr. C [REDACTED]. Therefore, it is recommended that **Allegation G** be closed as **Unsubstantiated**.

Civilian and Officer CCRB Histories

- Mr. C [REDACTED] has been a party to four CCRB complaints and has been a victim in 15 allegations (Board Review 20):
 - 200704948 involved allegations of a frisk, search of person, and a stop. All the allegations were closed as officer(s) unidentified.
 - 200713066 involved allegations of a threat of force which, two allegations of refusal to provide name and shield, a frisk, and a discourtesy (word). All the allegations were unfounded.
 - 201802980 involved allegations of a frisk, a vehicle search, offensive language, discourtesy (word), a refusal to provide shield number, and two allegations of a stop, and was closed as mediated.

- PO Bautista has been a member of service for five years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated. PO Bautista's CCRB history does not reflect any pattern pertinent to this investigation.
- PO V [REDACTED] has been a member of service for 13 years and has been a subject in nine CCRB complaints and 21 allegations, of which three were substantiated:
 - 201705029 involved substantiated allegations of a frisk, stop, and he was cited for other misconduct. The Board recommended formalized training and the NYPD imposed formalized training.
 - PO V [REDACTED] CCRB history does not reflect any patterns pertinent to this investigation.
- PO B [REDACTED] has been a member of service for five years and has been a subject in five CCRB complaints and eight allegations, none of which were substantiated. PO B [REDACTED] CCRB history does not reflect any pattern pertinent to this investigation.
- Sgt. S [REDACTED] has been a member of service for 10 years and has been a subject in eight CCRB complaints and 17 allegations, none of which were substantiated. Sgt. S [REDACTED] CCRB history does not reflect any apparent pattern pertinent to this investigation.

Mediation, Civil and Criminal Histories

- This case as not suitable for mediation.
- As of May 3, 2019, the New York City of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 21).
- According to the Office of court Administration (OCA), between March 6, 2002 and June 17, 2019, Mr. C [REDACTED] was convicted of disorderly conduct (three times) and driving while impaired (once) and Mr. C [REDACTED] had his license suspended, received varying amounts of imprisonment, community service, and fines (Board Review 19).

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Squad Leader: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Reviewer: _____

Signature	Print Title & Name	Date
-----------	--------------------	------